

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 24TH DAY OF FEBRUARY, 2021

BEFORE

THE HON'BLE MR.JUSTICE S. SUNIL DUTT YADAV

WRIT PETITION No.13633/2020 (T-RES)
C/W

WRIT PETITION No.3384/2021,
WRIT PETITION No.12555/2020

IN W.P. NO.13633/2020

BETWEEN:

M/S. ASIATIC CLINICAL RESEARCH PVT. LTD.
169/53, 14TH MAIN ROAD
IST BLOCK EAST
JAYANAGAR
BANGALORE - 560 001
REPRESENTED BY V. SRINIVASAN
DIRECTOR/GENERAL MANAGER.

... PETITIONER

(BY SRI. RAVI RAGHAVAN, ADVOCATE FOR
SMT. SUDESHNA BANERJEE, ADVOCATE)

AND:

1. UNION OF INDIA
REPRESENTED BY ITS UNDER SECRETARY
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
NORTH BLOCK
NEW DELHI - 110 001.
2. COMMISSIONER OF CENTRAL TAX
BANGALORE SOUTH
1, CK JAFFER SHARIEF RD
VASANTH NAGAR
BENGALURU - 560 001.

3. THE ASST. COMMISSIONER OF CENTRAL TAXES
SOUTH DIVISION-3
2ND FLOOR,
TTMC/BMTC BUILDING
KANAKAPURA ROAD
BANASHANKARI
BANGALORE - 560 070. ... RESPONDENTS

(BY SRI JEEVAN J. NEERALGI, ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF
THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE
REFUND REJECTION ORDER DATED 12.11.2020 PASSED BY R-3
FOR THE PERIOD OCTOBER 2018 AT ANNEXURE-A AND ETC.

IN W.P. NO.3384/2021

BETWEEN:

M/S. ASIATIC CLINICAL RESEARCH PVT. LTD.
169/53, 14TH MAIN ROAD
IST BLOCK EAST
JAYANAGAR
BANGALORE - 560 001
REPRESENTED BY V. SRINIVASAN
DIRECTOR/GENERAL MANAGER. ... PETITIONER

(BY SRI. RAVI RAGHAVAN, ADVOCATE FOR
SMT. SUDESHNA BANERJEE, ADVOCATE)

AND:

1. UNION OF INDIA
REPRESENTED BY ITS UNDER SECRETARY
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
NORTH BLOCK
NEW DELHI - 110 001.

2. COMMISSIONER OF CENTRAL TAX
BANGALORE SOUTH
1, CK JAFFER SHARIEF RD
VASANTH NAGAR
BENGALURU - 560 001.
3. THE ASST. COMMISSIONER OF CENTRAL TAXES
SOUTH DIVISION-3
2ND FLOOR,
TTMC/BMTC BUILDING
KANAKAPURA ROAD
BANASHANKARI
BANGALORE - 560 070. ... RESPONDENTS

(BY SRI B.S. VENKATANARAYAN, CGSC FOR R1;
SRI AMIT DESHPANDE, ADVOCATE FOR R2 & R3)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF
THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE
REFUND REJECTION ORDERS DATED 21.01.2021 PASSED BY R-3
FOR THE PERIOD NOVEMBER 2018 AND DECEMBER 2018 AT
ANNEXURES-A AND A1 RESPECTIVELY AND ETC.

IN W.P. NO.12555/2020

BETWEEN:

M/S. ASIATIC CLINICAL RESEARCH PVT. LTD.
169/53, 14TH MAIN ROAD
IST BLOCK EAST
JAYANAGAR
BANGALORE - 560 001
REPRESENTED BY SHRI V. SRINIVASAN
DIRECTOR/GENERAL MANAGER.

... PETITIONER

(BY SRI. RAVI RAGHAVAN, ADVOCATE FOR
SMT. SUDESHNA BANERJEE, ADVOCATE)

ORDER

The petitioner has sought for issuance of writ of certiorari to quash the refund rejection orders. Noticing that W.P.No.13633/2020 relates to rejection of refund order as regards October, 2018; W.P.No.12555/2020 relates to rejection of refund orders for the months of April, 2018 to September, 2018; W.P.No.3384/2021 relates to rejection of refund orders for the months of November, 2018 and December, 2018 and noticing that the rejection of refund orders relates to the same assessee and the similar contentions are advanced as regards to setting aside of the impugned orders, all the writ petitions are taken up together and disposed off by this common order.

2. Petitioner submits that he is the registered supplier under the Goods and Service Tax Regime and is involved in export of service. It is further submitted that the petitioner had paid IGST, but in light of his entitlement to claim refund on the ground of zero-rated supply, petitioner

had sought for refund of the IGST paid by him under Section 54 of the Central Goods and Service Tax Act, 2017.

3. **W.P.No.13633/2020:**

Petitioner submits that respondent - Authority had issued a show cause notice at Annexure-C dated 30.10.2020 at 4.04 p.m. calling upon him to furnish reply within 15 days from the date of service of notice and the petitioner was directed to appear on 03.11.2020 at 4.03 p.m. Petitioner further submits that a provisional reply came to be made out as per Annexure-D seeking for further time to make a detailed reply. An application for adjournment dated 03.11.2020 was also filed requesting for personal hearing. It is further submitted that without waiting for the period of 15 days as was made available to make out his reply to the show cause notice, refund application of the petitioner came to be rejected on 12.11.2020.

4. **W.P.No.12555/2020:**

Petitioner submits that notices came to be issued on 08.09.2020 and 19.09.2020 calling upon the petitioner to appear on 09.09.2020 and 21.09.2020 respectively while offering a period of 15 days from the date of service of notice to furnish reply as regards to such notices. Petitioner submits that he has made out communications to the show cause notices issued and also sought for extension of time to file his response. However, without considering the request for adjournment as made out or waiting for the period of 15 days as was made available to make out his reply, impugned orders came to be passed rejecting the refund applications as per the orders at Annexures-A1 to A3 dated 18.09.2020 and orders dated 01.10.2020 at Annexures-A4 to A6.

5. Accordingly, it is submitted that the order at Annexure-A for the month of October, 2018 in W.P.No.13633/2020 and the orders at Annexures - A1 to A6 for the period from April, 2018 to September, 2018 in

W.P.No.12555/2020 are in violation of the principles of natural justice as the entitlement of the petitioner to avail of the time period of 15 days to make out a detailed reply on merits and the request for personal hearing has been denied.

6. In light of the admitted position that the orders have been passed within a period of 15 days contrary to such period being made available to the petitioner and that request for adjournment has not been considered by the authorities, the orders of rejection of refund at Annexure-A in W.P.No.13633/2020 and Annexures - A1 to A6 in W.P.No.12555/2020 are set aside.

7. Respondent No.3 to afford the petitioner a fresh opportunity of hearing following the written representations of the petitioner. After affording such an opportunity for filing of fresh reply to the show cause notices issued and affording an opportunity of personal hearing, the orders to be passed by respondent No.3. Petitioner is directed to make out his detailed reply to the show cause notices

referred to above within a period of two weeks from the date of release of this order. Respondent No.3 to fix a date of hearing and dispose off the matter within a period not later than one month thereafter.

8. **W.P.No.3384/2021:**

Petitioner was issued with notice at Annexure-C dated 05.01.2021 calling upon him to be present on 12.01.2021 and notice at Annexure-C1 dated 06.01.2021 calling upon him to be present on 14.01.2021. It is submitted that the said notices also provided an opportunity of 15 days to reply to the said notices. Petitioner further submits that he had sought for extension of time as per the request made on 12.01.2021 vide Annexure-D and had further requested that personal hearing be fixed on 14.01.2021 in order to hear both the matters for the period of November, 2018 and December, 2018. It is submitted that a detailed reply was made out to the show cause notices issued. However, it is submitted that despite the request of the petitioner to fix the date as 14.01.2021, rejection order came to be passed

as per the orders at Annexures-A and A1 both dated 21.01.2021. Accordingly, it is submitted that his request for affording personal hearing on 14.01.2021 has not been considered and impugned orders have been passed.

9. Learned counsel for the Revenue, however, would contend that the personal hearing was fixed originally on 12.01.2021 and the petitioner ought to have availed of that opportunity and accordingly, the authority cannot be found to be in default as the impugned orders have considered in detail the submissions of the petitioner as made out in the reply to the show cause notices.

10. However, taking note that an opportunity of personal hearing was not availed, in the interest of justice, it would be appropriate if the petitioner is afforded an opportunity of personal hearing to substantiate the detailed replies made, as per the acknowledgements at Annexures-F and F1. Accordingly, the orders at Annexures-A and A1 are set aside.

11. Petitioner to be present for availing of opportunity of personal hearing, when such an opportunity is granted while disposing of the application of the petitioner as regards to the subject matter in W.P.No. 12555/2020, W.P.No. 13633/2020 and W.P.No. 3384/2021, and a common date may be fixed in order to avoid conflicting orders to be passed as the factual matrix is similar and question of consideration is also identical. Learned counsel for the petitioner submits that he would avail of the opportunity on the date that is fixed for hearing and would co-operate for expeditious disposal of the matter.

12. Accordingly, W.P.Nos. 12555/2020, 13633/2020 and 3384/2021 are ***disposed off***.

**Sd/-
JUDGE**

VP